



**TOWN OF HARPSWELL
PLANNING BOARD MINUTES
January 20, 2010
APPROVED**

MEMBERS PRESENT

John Papacosma, Chair
Roberta Floccher, Vice Chair
Robin Brooks, Secretary
Dorothy Carrier
Debora Levensailor, Associate
Burr Taylor, Associate

MEMBERS ABSENT

Joanne Rogers

STAFF PRESENT

Carol Tukey, Town Planner
Melissa Moretti, Recording Secretary

The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record*, was called to order at 6:30 PM by John Papacosma, Chair. Introductions were made of Board members and the Pledge of Allegiance was recited. The Chair then explained the Agenda, and introduced the first guest speaker.

OTHER BOARD BUSINESS

Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

NEW BUSINESS

Rich Rothe, a Planner with the Midcoast Council of Governments ("MCOG"), addressed the Board and distributed his resume. He said it included things he had done, as well as some of the services offered by MCOG. He explained that he had worked for MCOG since 2004 when he began as a transportation planner and was now a Land Use Planner. He said MCOG could provide "backup" services to the Town Planner. He reviewed the resume point-by-point. Mr. Rothe addressed specific areas of his expertise, i.e. comprehensive planning, land use, harbor management plans, wind turbines, etc.

Ms. Tukey thanked Mr. Rothe for his time, and said that she had used the resources of the previous MCOG planner.

OLD BUSINESS

Proposed New Ordinances and Ordinance Amendments for 2010 Town Meeting

Blasting Ordinance

Guest speaker Carl Wallace, Eastern Division Superintendent from Maine Drilling & Blasting, addressed the Board and spoke about the proposed blasting ordinance. He noticed there was no mention of a pre-blast survey; he said his company would do one for the neighbors within 250 ft. He said his company did not normally do certain pre-blast tests, i.e. well tests, flow tests, etc. and that such tests could be costly. He explained what his company's pre-blast survey consisted of. He said they had "door hangers" that explained the blasting warning systems. He stated that most ordinances required a 250 ft. survey area for most blasts, but "major projects" could require 500 ft. He suggested the matter of cost be added to the ordinance.

Mr. Wallace gave examples of the blasting ordinances in other towns, and also explained that services of other professionals, i.e. a hydrologist, could be expensive. Mr. Taylor said his understanding of what Mr. Wallace said was that it was "reasonable" to require a pre-blast survey. Mr. Wallace made a point to say that his company "did not make any money on pre-blast surveys." He also concurred with Mr. Taylor that pre-blast testing would add extra time to a project.

Mr. Papacosma told Mr. Wallace that the Board was “wrestling with” the issue of whether an abutter should have to suffer the consequences of a blast; that the Board had heard “war stories.” They wanted to know a “reasonable way to provide some mitigation;” that you might have to have testing before the blast and also afterward. Mr. Wallace described certain tests that could be done pre-blast. He said a typical well test would test for bacteria; you could also do a flow test, or a meter flow test. There was some discussion regarding iron in the water, and also salt water. Mr. Wallace reiterated that there was “no rule in the State of Maine” that gave a requirement for how far out you had to test.

Mr. Brooks asked Mr. Wallace what his company did for a well survey. Mr. Wallace said he didn’t think other companies did that. He explained that his company tested for bacteria, and they visited the homes during the pre-blast survey (when people would let them in). He said “it would be good to know” what the requirement would be. Mr. Taylor asked if there was a way to tell what tests might be important. Mr. Wallace suggested the Board talk to a hydrologist to get the best answers regarding wells. He gave an example of an issue his company was currently undergoing litigation for in Massachusetts. He reiterated that his company offered pre-blast well testing “especially along the coast.” Mr. Taylor asked who would be responsible to prove there was a problem; Mr. Wallace responded “the homeowner.” He reiterated that what was expected should be “spelled out.”

Ms. Carrier asked Mr. Wallace if he thought the requirement of a flow test would depend on the type of blast; he said that he (“personally”) thought so, and gave an anecdotal example. The Chair asked what percentage of wells might be affected (out of 100 blasts); Mr. Wallace said he could not answer that because he was not a hydrologist. He explained the industry standard of a “ground vibration spec,” which was 2.0; they were not to exceed that. The ground vibration would be measured by seismographs.

The Chair asked if they typically got a permit from a Code Enforcement Officer. Mr. Wallace responded that he was aware of only about 14 towns in Maine that required a permit. He said that some towns only required a well test, not a flow test, etc., and that the requirement was “spelled out.” Ms. Tukey asked what happened to the well sample his company was required to take for the Town of Edgecomb; Mr. Wallace said they went to the State. He stated that the pre-blast technician from his company could not make the meeting, but did offer his services to the Planning Board. He also said that his company contracted with a water company to do a flow test when one was required, and they might be able to answer questions regarding groundwater.

The Chair said the Board wondered how the State regulated blasting, if at all, and they understood that Maine did not license blasters; Mr. Wallace confirmed that, and stated that the blasting company would hold the license in Maine. He explained that licensing for a blasting company was under the jurisdiction of the State Fire Marshall’s Office. There was discussion regarding other New England states that had licensing requirements.

The Chair asked where a blaster, licensed or not, would get dynamite and related supplies. Mr. Wallace said you would have to have a Federal permit which would be issued through the Bureau of Alcohol, Tobacco and Firearms (the “ATF”). The Chair confirmed with Mr. Wallace that blasting material suppliers were “tightly licensed.”

Mr. Wallace reiterated the importance of notification where there would be blasting, and suggested the idea of a certified letter as the best way, especially in the case of a large summer population. He also suggested clarification of the handling of the water issue. Mr. Wallace referenced Sec. 5(1) of the proposed ordinance which addressed the 24 hour notice, and said that in a typical day in Harpswell you might “shoot” nine or ten times. He thought a notice might be worded in a way that said there would be blasting “all day” at a certain location. He said his company had a call list offered as part of their pre-blast survey.

Mr. Wallace also addressed Sec. 5(3) that regarded notification. He suggested the ordinance be specific with regard to the notification radius, and explained the notification process used by the City of Portland. The measurement of cubic yards was clarified.

Mr. Wallace addressed Sec. 5(4), and questioned the issue of a notice in the local paper (the Brunswick *Times Record*); he wondered how many days a notice would be published, and said that many towns did that; there was discussion.

Sec. 5(5) was addressed by Mr. Wallace, and he questioned the issue of when a blaster posts warning signs; evidently, they tend to disappear. He explained that OSHA required a blaster to post warning signs on the day of the blasting. He said that signs are usually posted on each side of the road nearest the blast site, or at the road entrance going into the site.

Ms. Levensailor said she was in favor of the proposed notification procedure; Mr. Wallace reiterated the proposed procedures previously discussed: notice in the local newspaper, notice on Harpswell Community Television and requirement of a pre-blast survey.

The type of sign was discussed. Mr. Wallace said the blaster was required by OSHA to take the sign down "at the end of the day" unless it was a State job. There was further discussion regarding a newspaper notice, and the cost, which would eventually fall to the homeowner.

Mr. Brooks asked for clarification about how the size of a blast was defined, and wondered how the Board would address it in the ordinance. Mr. Wallace referred to Topsham's ordinance; Ms. Levensailor read from the ordinance which stated that a blast that was 300 cu. yds. or less would be reviewed by the Code Enforcement Office, and a blast that was more than 300 cu. yds. would be reviewed by the Planning Board. Mr. Wallace also said that other town blasting ordinances sometimes have wording that state certain ordinance requirements could be waived in an emergency situation, either by the Code Enforcement Officer or by the Planning Board. There was discussion regarding the size of a blast; Mr. Wallace said that "a typical house lot was two days' worth of work." There was further discussion regarding the possibility of increased work load for the Planning Board with regard to review of the larger blasting projects. Mr. Taylor suggested there be "two levels" of approval.

The Chair expressed confusion with regard to displaced blasting material. Mr. Wallace said the ordinance did not mention anything about "shots being covered," and suggested it mention "ample cover" or the use of blasting mats. He said there was no OSHA requirement for cover, and mentioned that the cover could also be dirt cover. Mr. Wallace explained that his company used blasting mats because they used a non-electric blasting system.

Mr. Wallace asked for clarification regarding a 24 hr. notice by the blaster (Sec. 5(1)). Ms. Levensailor stated her understanding of the wording, which was notification within a two hour timeframe. Ms. Tukey said that Topsham had that requirement in their ordinance and explained how the process worked. She stated that she had previously worked as a Town Planner in Topsham. There was further discussion.

Mr. Wallace referenced Sec. 4(1) and asked for clarification with regard to the time a blasting project would begin in the morning. It was clarified that the 8:00 AM time stated was for the blast, not the loading. He also asked about a start time for drilling, and said it was "a lot noisier than the blasting." He suggested the Board consider 7:00 AM, instead of 8:00 AM.

Andre Deshaies, a resident of Harpswell, addressed the Board. He asked Mr. Wallace for clarification regarding an organization that would "oversee" the blasting industry. Mr. Wallace stated it was regulated by

the DOT, OSHA, the Maine State Fire Marshall's Office, the ATF and the U.S. Coast Guard. He also said the blasters' organization was the International Society of Explosive Engineers, based in Massachusetts (for New England). Mr. Deshaies asked if there was a "model blasting ordinance" in existence; Ms. Tukey responded that there was not. Mr. Wallace explained that blasters worked by the industry standard, the "ISE," and reiterated that there was no State regulation in Maine. Ms. Tukey stated that she had created Harpswell's proposed ordinance from seven blasting ordinances from other Maine towns.

The Chair explained to Mr. Deshaies that the organizations previously mentioned by Mr. Wallace provided "filters" and regulated the blasting industry without State regulations in force. Mr. Wallace said that the State Fire Marshall's Office could pull the license of a blasting company, if necessary. He said he didn't know of anyone [blasters] who did not have a Federal license to haul explosives.

Mr. Wallace stated that, in the Town of Bath, the blaster had to produce a copy of their "User's Certificate" as well as proof of insurance; he thought that Topsham's ordinance also had those requirements. He explained that the State of Maine issued the User's Certificate for his company; they "are permitted and licensed in the State of Maine to handle and use explosives." He said the Town would ask the blasting company to submit a copy of their User's Certificate at the time they asked for a permit. He said his company mailed out the User's Certificates every year, and the towns kept them on file. He said it was an easy way to know who was doing blasting in the Town – you would have a record that they were insured, and also that they were permitted and licensed. He also said it was possible to call the State Fire Marshall's Office to find out if a company was reputable, and his company would also provide references.

Mr. Taylor asked "if it was shown that a blast had hurt the water," how would that be fixed? Mr. Wallace said their safety department would have to answer that, and he "didn't want to get into claims;" if there was one, his company would handle it professionally. He said that, typically, the homeowner's insurance carrier would work with the company's insurance carrier.

The Chair asked if there were any other questions; there were none. Mr. Wallace said he would give the Board his business cards and they could call if they had any more questions. He asked the Board how the Town would handle it, after the ordinance was adopted, if a blasting job occurred in Town and there was no permit pulled. Ms. Tukey responded that she anticipated a letter would be sent out to local blasters [informing them of the ordinance], and asked Mr. Wallace if he could review a list of area blasters, once compiled. Mr. Wallace agreed to help, and said there were also a few blasters from out of state that came into Maine.

The Board thanked Mr. Wallace for his presentation, and they all agreed that it was very informative. It was decided that they would address the proposed ordinance at the meeting and not wait; Ms. Tukey reminded them that she would have to rewrite it, and that copies had to be available to the public prior to the public hearing scheduled for February 9, 2010.

Ms. Carrier addressed Sec. 3(5), and said she would like a User's Certificate from the State Fire Marshall's Office to be added to the requirements. Ms. Tukey said that it was previously addressed under Sec. 3(2) as "a license;" it was decided to specify a User's Certificate in the language and add it back in. She said she would contact the State Fire Marshall's Office to find out exactly what to call the User's Certificate. It was clarified that it was a certificate, not a license.

There was discussion whether or not to get a draft blasting ordinance to the Town Meeting in March; the consensus of the Board was to proceed.

Ms. Tukey said she could reinsert the "differentiation" language with regard to the size of a blast - the smaller blasts would go through the Code Enforcement Office and the larger blasts would be approved by the Planning

Board (300 cu. yds. would be the cut off). There was discussion. The issue of paperwork by the Code Enforcement Office with regard to a blasting certificate was discussed; the idea of a log book was mentioned, or something similar, as was done with building permits.

Mr. Taylor suggested there was “excessive amounts of notification;” Ms. Carrier concurred. The Chair thought it should be by Certified letter, not First Class. Ms. Carrier favored a Certified letter and notification broadcast by Harpswell Community Television for the larger blasts (300 cu. yds. or more). She did not think newspaper notification was necessary; that was a “legal advertisement that cost hundreds of dollars to put in.” Ms. Carrier thought that, for blasts under 300 cu. yds., a Certified letter to abutters was enough. Ms. Tukey said that, for blasts that would go through the Planning Board, the abutters would already get a notice of the public hearing.

Mr. Taylor asked about the distance for notification of abutters. The Chair said Mr. Wallace had mentioned 350 ft.; the Board decided that 500 ft. would be appropriate, and also decided to drop the newspaper notification requirement.

Regarding Sec. 5(5), special notification signage along a major roadway was discussed; it was reiterated that OSHA required signage on the day of a blast. There was further discussion; Ms. Carrier gave personal experience on the subject; she explained that her husband put in septic systems. She suggested that the Board “try it” and they could “tweak” the ordinance later.

Ms. Tukey addressed Sec. 3(2)(h); she had spoken with the Maine Historic Preservation Commission, and they said they had no requirement for a blasting permit. She said the Town could “request” that they research whether the site had historical or archeological significance. She asked if the Board wanted that issue to remain in the ordinance; the Board concurred that they did not. Ms. Tukey told the Board that there were maps in the Planning Office, and also at the State level, that showed such sites.

Pertinent to Mr. Wallace’s presentation, Ms. Tukey addressed Sec. 3(2)(i) that discussed studies. She suggested a change of the word “may” to “shall”, and suggested the wording be specific with regard to mandatory tests. The Board specified that a pre-blast assessment would include inspection of the foundation and a well sample. She explained that a water sample did not have to be tested unless deemed necessary, and could be frozen for later use. Ms. Tukey interjected that she was previously employed at Bigelow Labs in Portland and performed sea water sampling while there.

The Chair referenced Sec. 4(2)(b) and said he thought that the pre-blast test of a well sample was a “good idea.” Ms. Levensailor asked where a frozen sample would be kept, and there was discussion about the honesty of whoever took the well sample. Ms. Tukey said that the entity that tested the water sample for the blaster would tell the blaster what to do with it.

Ms. Tukey continued to address Sec. 3(2)(i) and suggested that foundation inspection and a well sample be left in. She suggested removing the requirement of a flow test; the Code Enforcement Officer might require that. The Board decided that the wording of “interior and exterior inspection” be used with regard to the pre-blast assessment as a standard for all blasts, regardless of size.

Ms. Tukey asked if Sec. 3(i)(2) “Hydrological Studies”, (3) “Geological Studies”, and (4) “Test Wells” be deleted, and (5) “Seismographs” be kept. She suggested the addition of an item (j) which could say “any other studies or information which may include...” and put hydrological studies and well tests under another section. The Chair mentioned resource protection areas; Ms. Tukey agreed with the Board that they wait for “another iteration” to address that issue.

Mr. Brooks suggested a 10 cu. yd. cutoff and a 300 cu. yd. cutoff with regard to notification; the Board decided that anything under 300 cu. yd. would be addressed by the proposed requirement. There was further discussion about the pre-blast survey.

There was discussion about the Code Enforcement Officer's role with regard to an adverse event at a blast site. Ms. Tukey said she would research Kennebunk's ordinance about how they addressed emergencies. The Board agreed to have language that addressed "exigent circumstances," and that either the Code Enforcement Officer or the Planning Board could waive [the ordinance requirements] dependant on the size of the blast.

Ms. Tukey said she would make the Board's requested changes and get it back to them, with the goal being next Wednesday, January 27th so the public would have it in time for review. The Chair suggested that any complex issue be dropped for now, and worked on at a later time.

Shoreland Zoning Ordinance Amendment

Ms. Tukey asked the Board if they had comments on any of the other proposed ordinance changes. She said that the Shoreland Zoning Ordinance was at an "impasse." She stated that Sam Alexander had asked how it would work on a sloped piece of land. There was discussion.

The Chair read from a handout he called "the DEP issue profile." Ms. Tukey said that was not what Harpswell's ordinance said; the Chair said it was an example of what the Board was "grappling with." Ms. Tukey confirmed with the Board that they wanted the proposed ordinance language to include foundations in the 30% calculations. Both Mr. Brooks and the Chair gave examples; there was discussion.

There was discussion with regard to volume calculations. Ms. Tukey said that the existing ordinance definition of "foundation" included basements (it was posts, slab and basement); "basements have volume." Ms. Floccher suggested the possibility of a definition of "basement" only for calculations addressed in the proposed article of the ordinance. Ms. Tukey also suggested using language that stated you could not have a basement if you wanted to use the 30% expansion.

The Chair defined "full basement," and described what the Board wanted to accomplish. There was further discussion. The Board decided to have the proposed ordinance remain as it was, for presentation at Town Meeting.

Workforce Housing Ordinance Amendment

Ms. Tukey said she had made changes "based on everyone's comments": it was made voluntary, the "fee in lieu" was removed, and there was a density bonus added in.

Ms. Levensailor said the changes addressed her concerns, and she was pleased with it. The Chair addressed §11.18.2.1 with regard to the definition of "undersized lot;" Ms. Tukey responded that it was addressed in §11.18.2.1(a) "Lot Size;" there was further explanation.

The Chair mentioned he did not understand the chart in §11.18.3.1 "Density Bonus Provisions," or the explanation language under it. There was discussion, using examples, with regard to the calculations on the chart.

The Chair addressed the "Workforce Housing Fund" as stated in §11.18.3.8, and asked what the source of the fund was. Ms. Tukey explained that it was donations of money or actual property [as defined on Pg. 5 of the

Ordinance Amendment]. She stated there would have to be a “separate warrant article” which would allow for the creation of the fund; it had been written as an “aside to the ordinance.”

The Chair referenced an e-mail from Ms. Tukey that addressed an “entity” buying homes for “rehab” for workforce housing; Ms. Tukey said that issue was addressed in the ordinance amendment. She explained “offsite options.” The Chair said that was all voluntary based on a developer that would want to do that. He explained his understanding of another “standalone” issue which would be a way to do something “immediately.” Ms. Tukey mentioned the Housing Trust in Harpswell and said they needed more money to buy houses; they weren’t to that point yet.

Ms. Levensailor referred to the top of Pg. 2 and wanted clarification of the side yard setback language. Ms. Tukey provided explanation.

Site Plan Review Ordinance

Ms. Tukey said there were “basically no changes.” However, since there was no appeals process mentioned in the existing ordinance, there was one added in for both the minor amendments and any site plan. There was further explanation with regard to Sec. 17 “Appeals.”

Swimming Pools

The Chair questioned the use of plastic free-standing swimming pools, such as would be used for toddlers. Ms. Tukey read from the State statute. Ms. Floccher read from Sec. 22 of the Maine Revised Statutes Annotated (“MRSA”). The Board agreed that the Chair’s question had been addressed satisfactorily by their proposed ordinance.

OTHER BOARD BUSINESS

Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

Ms. Tukey announced that there were no jurisdictional matters to discuss.

TOWN PLANNER’S UPDATES

Ms. Tukey said that she had no updates for the Board.

The Chair referenced, from his materials, a “special expansion allowance” with regard to a Basin Point property that had been discussed at an earlier meeting. He reiterated that nothing would be changed now with regard to the proposed ordinance to go before Town Meeting; it was, perhaps, for another year. He read an excerpt from his materials that addressed foundations. Ms. Tukey said she could scan and e-mail the information for distribution to the Board.

Ms. Tukey reminded the Board of the public hearing at Harpswell Islands School scheduled for February 9, 2010.

There was a motion to adjourn which was seconded. The meeting adjourned at 9:05 PM.

Respectfully Submitted,

Melissa Moretti
Recording Secretary